

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ADOLPH ZADRA, Deceased.

GREGORY JONES, MARY KAY JONES, and
GLENN JONES,

UNPUBLISHED
August 23, 2002

Petitioners-Appellees/Cross-
Appellants,

v

No. 232712
Dickinson Probate Court
LC No. 99-000100

SHARON MARSHALL,

Respondent-Appellant/Cross-
Appellee.

and

DARRELL MARSHALL and DEAN
MARSHALL,

Respondents.

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Respondent Sharon Marshall appeals as of right from the order of the Dickinson Probate Court awarding property to petitioners Gregory Jones, Mary Kay Jones, and Glenn Jones, following a jury determination of undue influence by respondent in connection with a supplemental needs trust for the benefit of Adolph Zadra (decedent), of which respondent became the trustee. Petitioners cross appeal, challenging the trial court's earlier decision dismissing their claims for breach of fiduciary duty and tortious interference with a business expectancy. We affirm in part, reverse in part, and remand for further proceedings.

I

The parties in this matter are all related to Adolph Zadra, the decedent, who died in September 1997. Respondent Sharon Marshall is Adolph's daughter, and respondents Darrell

and Dean Marshall are her husband and son, respectively. Petitioners are the children of decedent's other daughter, Joan, who predeceased him by one year.

Petitioners maintain that prior to Adolph's death, respondent essentially looted a supplemental needs trust created by Adolph and Joan, in which petitioners were supposed to share equally when respondent became the trustee following Joan's death. Upon learning that there was no money remaining in the trust following the death of decedent, petitioners filed suit, claiming undue influence, breach of fiduciary duty, and tortious interference with an expectancy. A two-day jury trial ensued and at the close of proofs, the trial court dismissed petitioners' breach of fiduciary duty claim and directed a verdict in favor of respondent on petitioners' claim for tortious interference with an expectancy.¹ Thus, only the claim of undue influence was considered by the jury. The jury ultimately returned a verdict in favor of petitioners, finding that respondent was in a position of trust with decedent, had the opportunity to influence him and did so, thereby substantially benefiting herself. The court awarded damages in the amount of \$90,607.91, representing approximately one-half of all assets in the decedent's trust.

Respondent subsequently filed a motion for judgment notwithstanding the verdict (JNOV) or a new trial on the grounds that the verdict was against the great weight of the evidence and that she was unfairly disadvantaged by time limitations placed on the presentation of her case. In turn, petitioners filed a motion for reconsideration, challenging the trial court's dismissal of their claims for tortious interference with an advantageous business expectancy and breach of fiduciary duty. The trial court denied these motions and the parties now appeal.

II

On appeal, respondent first contends that the trial court erred in denying her motion for judgment notwithstanding the verdict or, in the alternative, her motion for a new trial. We disagree.

We review a trial court's decision with regard to a motion for JNOV de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997). In reviewing a decision regarding a motion for JNOV, this Court must view the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). . . .

In deciding a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). This Court must determine whether the trial court abused its discretion in ruling with regard to a motion for a new trial. *Id.* Substantial deference is given to the

¹ In addition, Dean and Darrell Marshall were dismissed as parties as the result of a motion for a directed verdict.

trial court's conclusion that the verdict was not against the great weight of the evidence. *Id.* [*Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260-261; 617 NW2d 777 (2000).]

In general, to establish undue influence sufficient to overturn an otherwise valid conveyance, it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will. *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976); *In re Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Motive, opportunity, or even ability to control is not sufficient in the absence of affirmative evidence that it was exercised. *Erickson, supra* at 331.

However, in certain situations undue influence will be presumed. *Kar, supra* at 537. Such a presumption arises on the introduction of evidence establishing (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. *Id.*; *In re Leone Estate*, 168 Mich App 321, 324-325; 423 NW2d 652 (1988). Once the presumption is established, a "mandatory inference" of undue influence is created, shifting the burden of going forward with contrary evidence onto the person contesting the claim of undue influence. *In re Mikeska Estate*, 140 Mich App 116, 121; 362 NW2d 906 (1985). However, the ultimate burden of persuasion remains with the contestant. *Id.* See also *In re Peterson Estate*, 193 Mich App 257, 260; 483 NW2d 624 (1992); *In re Leone Estate, supra* at 325.

In the instant case, an in-depth analysis of the evidence leads us to conclude that the trial court neither erred in denying respondent's motion for JNOV nor abused its discretion in declining to grant respondent's motion for a new trial.

As noted above, in order to satisfy the first element of the presumption of undue influence, it was necessary for petitioners to demonstrate the existence of a confidential or fiduciary relationship between respondent and decedent. In general, the existence of a confidential or fiduciary relationship is a question of fact. *In re Estate of Swantek*, 172 Mich App 509, 513-514; 432 NW2d 307 (1988). It can arise from a technical fiduciary relationship or from an informal arrangement, *Daane v Lovell*, 83 Mich App 282, 301; 268 NW2d 377 (1978), and the key to determining whether such a relationship exists depends on whether the parties have a relationship of "faith, confidence, and trust" in which one party relies "upon the judgment and advice of the other party." *Nederlander v Nederlander*, 205 Mich App 123, 127; 517 NW2d 768 (1994). Thus, for example, a confidential relationship exists when a person enfeebled by poor health relies on another to conduct banking or other financial transactions. *Swantek, supra* at 513-514.

In the instant case, the parties do not seriously dispute that respondent was in a position of trust with respect to decedent. Apart from the evidence that respondent became the trustee of the supplemental needs trust, petitioners also presented other evidence that respondent acted in a fiduciary capacity. Respondent testified that decedent gave her his assets because he knew that she would care for him.

With regard to the second element, it is clear from our review of the evidence that respondent benefited from her relationship with decedent, inasmuch as she received substantial monetary benefits both in December 1995 and December 1996. On December 10, 1996, acting as trustee, respondent transferred ownership of decedent's home into her own name, subsequently selling it on July 30, 1997, and receiving \$48,196.89 from the sale of the home and its contents. On December 12, 1996, decedent changed the ownership and beneficiary of two Ford Life Insurance annuities from decedent to respondent, and respondent authorized that the annuity payments from these accounts be paid into her checking account. At the same time, respondent closed the trust accounts and transferred all of the money into her own checking account. In addition, the John Hancock life insurance policy beneficiary was changed from the trust to respondent, and the majority of the \$15,000 from the First National Bank of Norway joint checking account that decedent had transferred to a shared account in December 1995 was paid to respondent in December 1996. Thus, the record overwhelmingly supports petitioners' assertion that respondent benefited from decedent's transactions in December 1995 and December 1996.

Petitioners also presented evidence demonstrating that respondent had the opportunity to influence decedent's decisions to place his money in a joint account with her in December 1995, and to transfer his assets in December 1996. Respondent admitted that she spent the winters with decedent, particularly the winters of 1995 and 1996, when the disputed transactions occurred. The documents contained in decedent's estate plan, especially those reflecting his "revocation" of a number of his previous documents and their replacement on March 4, 1996, also support the establishment of this element, given that at the same time, a number of documents were prepared nominating respondent as decedent's personal representative, his patient advocate, and giving her powers of attorney to both transfer money into the trust and out of it, or even to divest him of his interest in property. When respondent became the trustee of decedent's trust, she became the person through whom decedent was required to act when he expressed his desire to transfer money from the trust to her. Petitioners' expert witness opined that there was ample evidence that respondent was "active in procuring the upset of the plan." Therefore, petitioners presented sufficient evidence to establish that respondent had the opportunity to influence decedent's decision to remove the money from the trust and transfer other assets to respondent in December 1995 and December 1996. Accordingly, an initial presumption of undue influence was established in the case.

In support of her argument that the verdict was against the great weight of the evidence, respondent maintains that she effectively rebutted the presumption of undue influence through testimony showing that she withdrew the money and other assets from the trust pursuant to decedent's instructions, because decedent knew she would be using it to care for him and that she would return it to him if he needed it. However, even assuming *arguendo* that such testimony constituted evidence sufficient to rebut the presumption, see e.g., *Kar, supra* at 543-544, petitioners presented additional direct and circumstantial evidence to sustain their ultimate burden of persuasion and overcome respondent's motions for JNOV or a new trial. Such evidence included the testimony of petitioners' father, Carl Jones, who stated that he had heard respondent tell decedent that she would disown him if he had anything to do with Carl after Joan died. He also stated that decedent appeared under great stress and under respondent's control when he and respondent visited Joan in December 1995 in an attempt to convince Joan to add respondent's name to the checking account.

Additionally, as noted by the trial court, numerous witnesses testified that decedent was not an “independent” individual fully capable of making his own financial decisions, but was a passive man who became increasingly depressed following the deaths of his wife and child, who was taking medication for depression in both 1995 and 1996, and who became increasingly forgetful during that time period. Even respondent admitted that decedent was taking medication for depression from at least December 1995 until his death. Moreover, numerous witnesses provided testimony rebutting not only respondent’s assertions that decedent did not have a good relationship with Carl Jones and wanted to disinherit the grandchildren, but also respondent’s contention that decedent sought assisted living because he no longer wanted to be bothered with his house.

In light of the foregoing evidence, we conclude that the trial court did not err in denying respondent’s motion for JNOV or abuse its discretion in refusing to grant a new trial on the ground that the verdict was against the great weight of the evidence. *Morinelli, supra*.

III

Respondent has also failed to establish that the trial court abused its discretion in refusing to grant respondent a new trial under MCR 2.611(A)(1)(a), which provides:

(1) A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:

(a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.

Here, respondent maintains that because the jury was purportedly “forced” to deliberate into the early morning hours, there was an irregularity in the proceedings that denied respondent a fair trial. We disagree.

Following the close of petitioners’ proofs, respondent requested either a continuance or a mistrial based on the fact that it was approximately 8:30 p.m. on October 11, 2000, when petitioners finished presenting their case, and counsel for respondent was not certain he could finish by midnight. The trial court denied these motions and respondent then presented her proofs, which lasted until 10:31 p.m. Respondent did not renew either motion and, following the reading of jury instructions, the jury began deliberating at 11:38 p.m. The jury reached its verdict at 1:56 a.m. the next day.

Respondent has provided no supporting authority for her position that a trial court may not continue past the hours normally regarded as a working day or may not allow a jury to deliberate into the late evening or early morning hours. A party may not simply state a position on appeal and leave it to this Court to search for authority to sustain or reject its position. *Hover v Chrysler Corp*, 209 Mich App 314, 319; 530 NW2d 96 (1994); *Consumers Power Co v Public Service Comm*, 181 Mich App 261, 268; 448 NW2d 806 (1989). Thus, respondent has failed to properly present this issue for appeal.

In any event, we conclude that neither the continuation of the trial nor the court's later decision not to grant a new trial were so violative of fact and logic that it evidenced a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34-35; 609 NW2d 567 (2000). As noted by petitioners, respondent was allowed to thoroughly question her witnesses and respondent's nebulous claim of denial of a fair trial is insufficient without an indication of the issues she was not able to cover in her questioning.

Moreover, at 4:22 p.m. on October 11, 2000, the trial court noted that the trial was "going into overtime" and discussed with the jury their preference for either continuing that evening (with a statement that it expected that they would be able to begin deliberations in three or four hours with time off for dinner) or returning another day. The trial court then gave the jury time to discuss the issue and the jurors decided to continue. At various times during the remainder of the trial, the trial court asked for feedback and the jury did not indicate that it had changed its mind or needed a recess. In fact, at 9:59 p.m., the jurors replied that they were "fine" and nothing subsequently placed in the record indicates that the jurors wished to adjourn for the evening. Also, the record contains no indication that the trial court told the jury that it could not recess for a time and resume deliberations the next morning. Thus, although the situation was unusual, under the circumstances the trial court did not abuse its discretion in refusing to grant respondent's motion for a new trial under MCR 2.611(A)(1)(a).

IV

On cross appeal, petitioners first allege that the trial court erred in dismissing their claim of breach of fiduciary duty. We agree.

Review of a trial court's decision granting a directed verdict is generally de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997).² In reviewing the trial court's decision, this Court determines whether a question of fact existed by examining all the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998); *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). This Court recognizes the unique opportunity of the jury and the trial judge to observe the witnesses and the factfinder's responsibility to determine the credibility and weight of the testimony. *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). Thus, if reasonable jurors could honestly have reached different conclusions, this Court may not substitute its judgment for that of the jury. *Tobin v Providence Hosp*, 244

² In view of the timing of the trial court's dismissal of the breach of fiduciary duty claim, after the close of proofs, coupled with the fact that petitioners had earlier moved the trial court, albeit unsuccessfully, for a directed verdict regarding this claim, we review this issue as one challenging the grant of a directed verdict in favor of respondent.

Mich App 626, 652; 624 NW2d 548 (2001); *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996).

In the instant case, the trial court initially dismissed petitioners' claim of breach of a fiduciary duty because

[t]hat is tied into undue influence. In essence it amounts to the same thing anyhow. But for undue influence there would be no breach of any fiduciary duty. So it all does come down to that undue influence. That just simplifies it for the jury too. So it is a great benefit for everybody.

Later, the trial court clarified its ruling, ultimately determining that respondent did not owe a fiduciary duty to petitioners as a matter of law because they were merely contingent beneficiaries of the trust agreement.³ However, our review of the language of the conveyance and applicable law indicates that the trial court erred.

The disputed provisions of the trust appear in section 9.1, which states:

Death of Adolph. This trust shall terminate on the death of Adolph. Thereupon, Trustee shall pay any expenses authorized under Section 8 [taxes and expenses]. Next, Trustee shall equally divide the remaining balance of the trust estate so as to create one share for each surviving secondary beneficiary and one share for each deceased secondary beneficiary who leaves issue then living. The share allocated to any surviving secondary beneficiary shall be distributed directly to the secondary beneficiary, free of trust. The share allocated for any deceased secondary beneficiary who leaves issue then living shall be equally divided and distributed between the deceased secondary beneficiary's surviving issue, free of trust.

Respondent and Joan were specifically named as secondary beneficiaries of the trust. Petitioners argue that the above provisions created a vested remainder in them, at least at the point when their mother, Joan, died. Respondent, on the other hand, maintains that petitioners became vested beneficiaries only after decedent's death and the trust had been distributed. We find petitioners' assertion to be correct.

In general, "[i]n resolving a dispute concerning the meaning of a will or trust, the court's sole objective is to ascertain and give effect to the intent of the testator or settlor." *In re Nowels*

³ The trial court stated:

I guess I touched on this before. We've got the primary and the secondary beneficiary, I understand that. But this duty only goes to heirs, devisees (sic) and beneficiaries. Now again, this – the plaintiffs are contingent beneficiaries and I really don't know how, I don't see how a fiduciary would have a duty to a contingent beneficiary. Because, as happened in this case with the events that occurred, that would extinguish that duty entirely. So I don't think that, I don't see that that is a proper allegation.

Estate, 128 Mich App 174, 177; 339 NW2d 861 (1983). The trust instrument itself must be looked at to determine the settlor's intent and each word in the trust document should be given meaning, if possible. *In re Butterfield Estate*, 418 Mich 241, 259; 341 NW2d 453 (1983). However, the presence of an ambiguity will cause this Court to look outside the four corners of a will or trust in order to carry out the testator's intent. Accordingly, if a trust document evinces a patent or latent ambiguity, a court may establish intent by considering two outside sources: (1) surrounding circumstances, and (2) rules of construction. *In re Maloney Trust*, 423 Mich 632, 639, 645; 377 NW2d 791 (1985).

Under the rules of construction, a vested interest is one that is capable of becoming possessory immediately on the expiration of the preceding estate. *In re Childress Trust*, 194 Mich App 319, 322-323; 486 NW2d 141 (1992); *Stevens Mineral Co v Michigan*, 164 Mich App 692, 696; 418 NW2d 130 (1987). Even when a remainderman may not take because he predeceases the preceding estate, this type of an interest is termed a vested remainder interest subject to defeasance rather than a contingent remainder. *In re Jamieson Estate*, 374 Mich 231, 236; 132 NW2d 1 (1965); *In re Childress Trust*, *supra*. Additionally,

A remainder interest that becomes possessory upon the death of the lifetime beneficiary is vested even if the holder of the life interest may invade the principal and has discretion to exhaust the corpus. *Broas v Broas*, 153 Mich App 310, 311-312; 116 NW 1077 (1908). Where the trust provides that the trustee may invade the entire corpus of the estate if necessary to support and provide medical care for the income beneficiary, the persons named as being entitled to the corpus upon the death of the income beneficiary have a vested remainder interest in the corpus of the trust subject to defeasance if the entire corpus is used as described. *Glaser's Elevator & Lumber Co v Lee Homes, Inc*, 65 Mich App 328, 331; 237 NW2d 312 (1975). [*In re Childress Trust*, *supra* at 323.]

Moreover, Michigan favors early vesting of estates and ambiguities in the will or trust are to be read to create such a vested interest. See, e.g., *In re Jamieson Estate*, *supra* at 237-238; *In re Hurd's Estate*, 303 Mich 504, 509-512; 6 NW2d 758 (1942); *In re Shumway's Estate*, 194 Mich 245, 253-254; 160 NW 595 (1916).

Applying these rules of construction to resolve the recognized ambiguities in the language of the trust at issue, we conclude that the trial court erred in characterizing petitioners' interest in the trust at the time of Joan's death as "contingent." Once Joan died, petitioners' interest could become possessory at the termination of the preceding estate on decedent's death through § 9.1 of the trust, and the fact that they had to survive decedent to do so did not change this result. *In re Childress Trust*, *supra*. Thus, petitioners are correct in their assertion that they became vested remaindermen at the time of Joan's death. Moreover, as noted by petitioners, under the Revised Probate Code, the definition of "beneficiary" includes holders of both vested and contingent remainders. MCL 700.3(2). Therefore, as beneficiaries to the trust, petitioners were owed fiduciary duties by respondent when she became trustee.

With regard to the question of an actual breach, petitioners maintained in their initial complaint that respondent breached her fiduciary duty to them by breaching the duty of loyalty, by failing to maintain accurate records and account to petitioners for the closing actions taken by

respondent, and by failing to exercise sound business judgment.⁴ As noted in *In re Green Charitable Trust*, 172 Mich App 298, 312-315, 323-324; 431 NW2d 492 (1988):

In general, the duties imposed on the trustee are determined by consideration of the trust, the relevant probate statutes and the relevant case law. . . . A claimed breach of duty and any resulting liability is tested by the facts of each case.

The standard of care expected of a trustee is that of “a prudent man dealing with the property of another,” To be prudent includes acting with care, diligence, integrity, fidelity and sound business judgment. . . . In addition, the courts have imposed on the fiduciary duties of honesty, loyalty, restraint from self-interest and good faith. . . .

* * *

Specific duties of trustees include keeping the beneficiaries “reasonably informed of the trust and its administration.” MCL 700.814; MSA 27.5814.

* * *

It is a fundamental principle that the trustee must display loyalty to the interests of the beneficiary, to the exclusion of all selfish interests or consideration of the interests of third parties. This principle is based on the understanding that a person acting in two capacities or in behalf of two interests may consciously or unconsciously favor one side over the other. It is not necessary that the trustee gain from the transaction to find disloyalty. . . . “In its desire to guard the highly valuable fiduciary relationship against improper administration, equity deems it better to forbid disloyalty and strike down all disloyal acts, rather than to attempt to separate the harmless and the harmful by permitting the trustee to justify his representation of two interests.” [Citations omitted.]

See also MCL 700.501; MCL 700.813; MCL 700.818(2) and (4); *In re Messer Trust*, 457 Mich 371, 380; 579 NW2d 73 (1998); *In re Childress Trust*, *supra* at 324, 328.

As discussed in Issue II, see text *supra*, petitioners presented evidence that respondent engaged in improper self-dealing, thus forming the basis for their cause of action for breach of the fiduciary duties of loyalty and due care. *In re Green Charitable Trust*, *supra*. See also *In re Harold S Ansell Family Trust*, 224 Mich App 745, 749; 569 NW2d 914 (1997); *In re Jobe Estate*, 165 Mich App 774, 778; 419 NW2d 65 (1988). Moreover, when petitioners became

⁴ Although petitioners maintain that the parties agreed that the former Revised Probate Code (RPC), MCL 700.1 *et seq.*, repealed by 1998 PA 386, MCL 700.8102, applied to the actions of respondent in this case, they claim that they proceeded with their claim under the newly enacted Estates and Protected Individuals Code, MCL 700.1101 *et seq.* (EPIC), which replaced the RPC. However, the record does not support petitioners’ claim. We therefore review petitioners’ claim under the RPC, which was in effect at the time of these events. See MCL 700.8101.

vested beneficiaries, respondent was charged with the duty of keeping them informed and rendering accountings to them, MCL 700.814, a duty that she failed to perform as evidenced by the testimony of petitioners that they were never informed of any of respondent's actions after she became trustee. Thus, petitioners have presented sufficient evidence to allow a factfinder to determine whether respondent breached a duty owed to petitioners in the instant case.

Although the trial court initially suggested, in ruling on this issue, that petitioners' breach of fiduciary duty claim essentially merged with their claim of undue influence, petitioners correctly argue that the claims should be differentiated by the potential for the recovery of exemplary damages arising from fiduciary improprieties. Although exemplary damages are not proper in every case of breach of fiduciary duty, such damages may be proper in instances where the harmed party can show mental suffering or injury as a result of the fiduciary's "willful and wanton" reprehensible conduct. See *Gilroy v Conway*, 151 Mich App 628, 635-636; 391 NW2d 419 (1986); *Green v Evans*, 156 Mich App 145, 152-153; 401 NW2d 250 (1985). "Direct evidence of an injury to the plaintiff's feelings is not essential" and the question is "whether the mental suffering and injury to feelings are natural and proximate in view of the nature of the defendant's conduct." *Id.* at 153.

Thus, in the instant case, we reverse the trial court's dismissal of petitioners' claim for breach of fiduciary relationship and remand for a new trial on this claim.

V

On cross appeal, petitioners next contend that the trial court erred in directing a verdict in favor of respondents pertaining to their claim of tortious interference with an expectancy. We disagree.

The basic elements of a claim of tortious interference with a business relationship are: (1) the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted. *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994). See also *Feaheny v Caldwell*, 175 Mich App 291, 300-301; 437 NW2d 358 (1989); *Northern Plumbing & Heating, Inc v Henderson Brothers, Inc*, 83 Mich App 84, 93; 268 NW2d 296 (1978). Not all interferences, however, give rise to a claim for relief; the interference must be "improper." *Winiemko, supra* at 417. To this end, "improper interference requires both the absence of justification and the purpose of interfering with plaintiff's contractual rights or plaintiff's business relationship or expectancy." *Id.* at 418, n 3 (citation omitted). See also *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996). This can be shown either by proving "the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship." *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984).

In the present case, the trial court found that petitioners had failed to establish respondent's knowledge of their expectancy, had presented no evidence of a deliberate intent to interfere with it, and had failed to present proof that respondent's interference caused decedent to

disrupt or terminate the expectancy. The court therefore dismissed petitioners' claim in this regard. We conclude that the trial court reached the right result, albeit for the wrong reason.

Although petitioners claim that they had an "expectancy," they point to no authority which would suggest that such a claim is applicable to the circumstances presented herein, involving a devise or bequest or a fiduciary's failure to perform his duty under a will or trust. As previously noted, a party may not simply state a position on appeal and leave it to this Court to search for authority to sustain or reject its position. *Consumers Power Co*, *supra* at 268. Indeed, as a matter of public policy, the characterization of a devise or bequest in a will or trust as a "business transaction" in the context of a claim for tortious interference with a business relationship should be discouraged. Although petitioners may have sought some economic advantage in waiting out the death of decedent and their mother, their expectation cannot fairly be termed a business relationship with decedent in the sense that they were contracting for remuneration through a quid pro quo arrangement. See *Kar*, *supra* at 556 (dissenting opinion of Levin, J.) ("Intra-family transactions and dispositions are . . . prompted generally by affection, kindness and other proper considerations. . . ."). Therefore, although the trial court may have erred in its reasoning, its dismissal of petitioners' claim was proper. "[T]his Court does not reverse a lower court's decision where it reached the right result for a wrong reason." *Hawkins v Dept of Corrections*, 219 Mich App 523, 528; 557 NW2d 138 (1996). We conclude that the trial court properly directed a verdict in favor of respondent on petitioners' tortious interference claim; petitioners' interests were properly channeled through their claims alleging undue influence and breach of fiduciary relationship.

VI

Finally, petitioners contend on their cross appeal that the trial court erred in deciding the issue of damages arising from petitioners' showing of undue influence. Petitioners maintain that this factual determination should have been left to the jury. However, this issue has been waived due to petitioners' acquiescence in this procedure at trial.

Petitioners engaged in discourse with the court concerning this issue during trial and did not contest the court's decision to decide damages until after they received the trial court's calculation, which apparently did not afford them the amount to which they felt they were entitled. A party may not harbor error as an appellate parachute. *Schulz v Northville Public Schools*, 247 Mich App 178, 181, n 1; 635 NW2d 508 (2001). Therefore, we consider this issue waived for appeal. *Id.*

Even if error occurred, petitioners were not harmed as a result. Petitioners do not dispute the trial court's finding regarding the amount of money owed to them, only that the trial court did not include statutory interest on the judgment or lost opportunity costs. Again, petitioners have failed to provide any authority in support of their claim that they are entitled to these amounts. Thus, with the view that, generally, a party may not simply state a position on appeal and leave it to this Court to search for authority to sustain or reject its position, *Consumers Power Co*, *supra*, we conclude that petitioners' argument is without merit.

VII

In sum, we affirm the trial court's order denying respondent's motions for JNOV or new trial, and thereby uphold the jury determination of undue influence on the part of respondent in

this matter. We further affirm the dismissal of petitioners' claim for tortious interference with a business expectancy. However, we reverse the trial court's dismissal of petitioners' count alleging breach of fiduciary duty and remand for further proceedings on this claim.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Petitioners, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer